

Attorney Docket No.: J3706(C)  
Serial No.: 10/540,665  
Filed: October 26, 2005  
Confirmation No.: 2390

### **REMARKS**

This amendment is submitted in a good faith attempt to advance the prosecution of this application and consolidate the issues for appeal. Entry thereof is respectfully requested.

Claim 1 has been amended to correct a typographical error whereby "agent" was inadvertently deleted from the second occurrence of "anti-dandruff agent" in the first line of subparagraph (d); additionally, for consistency, "antidandruff" has been hyphenated.

Claim 1-15 stand rejected under 35 U.S.C. 103(a) as obvious over US 2003/0202952 (Wells et al.). This rejection is respectfully traversed.

Wells et al. discloses shampoo compositions wherein the anti-dandruff agent is a material (e.g., a pyridinethione salt, selenium sulphide, particulate sulfur or mixtures thereof, with pyridinethione salts being preferred) that is present in the composition in particulate form. In contrast, the anti-dandruff agent present in the subject compositions is in solution; thus, in the subject compositions the anti-dandruff agent is not an insoluble, particulate material.

The Office Action of November 1, 2007 states:

Wells et al teach a shampoo containing anti-dandruff particles, an example of which comprises 12% sodium laureth sulphate, 2% sodium lauryl sulphate, 2% cocoamidopropyl betaine, 2% sodium lauroamphoacetate, 1% antidandruff agent, 0.5% cationic polymer, and the the balance water...The compositions have a preferred pH as high as 7.5..., and in addition to the anti-dandruff agents, an additional anti-microbial agent may be added such as climbazole (§54). Accordingly, it would have been obvious to one of ordinary skill in the art to

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include climbazole as an anti-microbial agent in example 11 with a reasonable expectation of successfully obtaining an effective anti-dandruff shampoo.

Applicants have traversed this rejection on the grounds that the anti-dandruff agent of the reference is in particulate, not solubilised form. Though this is true, the climbazole is taught as an antimicrobial, not a particulate anti-dandruff agent, and so it is not present as a particulate. ..The examiner acknowledges that in the previous office action, climbazole was erroneously identified as an anti-dandruff agent, and the examiner regrets the error. However, the teachings of the reference, though originally misinterpreted, give guidance to one of ordinary skill to add an additional antimicrobial with a reasonable expectation of successfully obtaining an effective anti-dandruff shampoo, and so the rejection is still valid and is maintained.

Wells et al. filed April 22, 2003, claims priority to provisional application No. 60/374,345 filed April 22, 2002. A review of the provisional application reveals that paragraphs 51 through 57, (including paragraph 54 which describes azole anti-microbials including climbazole) **were not present in that application.** The Paragraph 54 disclosure of climbazole as an antimicrobial active does not appear until the April 22, 2003 regular utility filing. The subject application claims priority from a British application filed December 23, 2002. It is respectfully submitted that the subject claims are supported by this British application and, as regards the disclosure of the use of climbazole, the British application antedates the April 22, 2003 filing date of Wells et al. It is, therefore, respectfully submitted that rejection under 35 U.S.C. §103(a) is improper and should be removed.<sup>1</sup>

Moreover, in contrast to the subject application, wherein the anti-dandruff agent is present in solution, Wells et al. requires, and its primary focus remains, the deposition of an insoluble, particulate anti-dandruff active through the use of a cationic polymer. In contrast, the Applicants have unexpectedly found that in a surfactant-

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<sup>1</sup> It is noted that Wells et al. does disclose that its compositions may additionally contain "antimicrobial agents which are useful as cosmetic biocides and antidandruff agents including: water soluble components such as piroctone olamine, water insoluble

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containing composition such as a shampoo, the selection of surfactant, can significantly impact the deposition of climbazole, an anti-dandruff agent present in solution form. There is nothing in Wells et al. that discloses or suggests that the inclusion of an alkyl amphoalkanoate surfactant in a composition containing an anionic surfactant and an amphoteric or zwitterionic surfactant can significantly improve the deposition of climbazole.

In light of the above amendments and remarks, it is respectfully submitted that the instant claims, as hereby amended, are not obvious over Wells et al. Accordingly reconsideration and allowance of the claims, as hereby amended is respectfully requested.

If a telephone conversation would be of assistance in advancing the prosecution of the present application, applicants' undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,



Karen E. Klumas  
Registration No. 31,070  
Attorney for Applicant(s)

KEK/sa  
(201) 894-2332